

73-1153

IN THE  
SUPREME COURT OF THE UNITED STATES

---

.....Term, 1979

Number .....

---

RECEIVED

FEB 5 1979

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

FRANCIS RICK FERRI,

Petitioner

- vs -

DOMINICK ROSSETTI, ESQUIRE,

Respondant

---

PETITION FOR WRIT OF CERTIORARI TO  
THE SUPREME COURT OF PENNSYLVANIA  
FOR THE COMMONWEALTH OF PENNSYLVANIA

---

By,

Francis Rick Ferri  
P.O. Box 1000  
Lewisburg, Pa. 17837

Petitioner Pro se

## JURISDICTIONAL STATEMENT

(a) This is an appeal from the Opinion & Order of the Pennsylvania Supreme Court, Appendix pages 1 thru 9, by a divided Court affirming the lower Court's order dismissing petitioner's tort claim against his former assigned counsel.

(b) The jurisdiction of this Court is invoked under Title 28, U.S.C., Section 1257 (3). Appeals from state courts for writ of certiorari.

(i) The proceeding below centered upon petitioner's tort claim, under state law, seeking redress for injuries inflicted upon him by respondent, after the attorney-client period of representation has terminated.

(ii) The Order of the Pennsylvania Supreme Court was entered on January 24, 1979, and has not been published as of this date. The sister case in this matter (now pending certiorari before this Court in Docket Number 78-5981) appealed from the Opinion & Order of the Pennsylvania Supreme Court in Ferri v Ackerman, \_\_\_\_\_ Pa. \_\_\_\_\_, 394 A. 2d 553 (1978)

The basis for denial in the instant matter rested on the Ferri v Ackerman, supra, Opinion & Order.

## CONTENTS

	Page
Jurisdictional Statement	1
Question Presented For Review	2
Statement Of The Case	2
Reasons For Granting The Writ	4, 5
Argument	
I    WHETHER A LAWYER APPOINTED TO REPRESENT THE PETITIONER, UNDER THE CRIMINAL JUSTICE ACT, 18 U.S.C. § 3006A, IN A GRAND JURY INVESTIGATION IS IMMUNE FROM TORT LIABILITY AT THE SUIT OF HIS FORMER CLIENT FOR THE ADMITTED LOSS OF THAT CLIENT'S FILES ONE YEAR AFTER THE ATTORNEY-CLIENT RELATIONSHIP HAD BEEN TERMINATED ?	5, 6
Conclusion	7
Certificate Of Service	8
<u>AUTHORITIES</u>	
<u>Butz v Economou</u> , 47 L.W. 4961 (1978)	3, 4, 5
<u>Ferri v Ackerman</u> , _____ Pa. _____, 394 A. 2d 553 (1978)	1, 4
<u>Ferri v Ackerman</u> , Petition For Writ Of Certiorari No. 78-5981	1, 4
<u>Imbler v Pachtman</u> , 424 U.S. 409 (1976)	4, 5, 6
<u>Briggs v Goodwin</u> , 569 F. 2d 1 (D.C. Cir 1978)	6
<u>Fort Meyers Seafood Packers Inc. v Steptoe &amp; Johnson</u> , 381 F. 2d 261 (D.C. Cir. 1967)	6
<u>Lynch v Household Finance Corp.</u> , 405 U.S. 538 (1972)	5
<u>Stump v Sparkman</u> , _____ L. Ed. 2d _____ (1978)	6
<u>Wood v Strickland</u> , 420 U.S. 308 (1975)	5

QUESTION PRESENTED FOR REVIEW

Whether a lawyer appointed under the Criminal Justice Act, 18 U.S.C. § 3006A, to represent the petitioner in a Grand Jury investigation is immune from tort liability at the suit of his former client: for the admitted loss of that client's files one year after the attorney-client relationship had terminated?

STATEMENT OF THE CASE

On January 21, 1974, attorney Dominick Rossetti, respondent, was appointed by the U.S.D.C. for W. Pa., under the Criminal Justice Act (CJA), 18 U.S.C. 3006A, to represent the petitioner in a Grand Jury investigation, which pertained, in part, to an investigation for which the petitioner was then under federal arrest.

In the course of that appointment federal prosecutors discussed with the respondent at times, the petitioner at times, and with both (Ferri & Rossetti) at times certain benefits that petitioner was to receive in exchange for the subject matter of those meetings, which reached a climax on February 5, 1974, when a three-way meeting occurred at the Allegheny County Jail, whereby federal prosecutors gave the petitioner written assurances outlining the benefits the petitioner then received.

The written assurances were left in the care and custody of the respondent, who assembled a file in behalf of the petitioner, detailing the dates, the subject matter, and a synopsis of each communication that occurred between the three parties.

On March 6, 1974, petitioner was released from the Grand Jury investigation, without testimony, and the legal representation of the petitioner by the respondent under the CJA terminated.

On August 28, 1974, petitioner was indicted in federal court contrary, in his belief, to the written assurances he had received from the federal prosecutors, at the February 5, 1974, three-way meeting. Petitioner then filed a motion to dismiss the federal indictment and subpoenaed the respondent, including the file containing the written assurances, to testify in his behalf.

At the hearing on petitioner's motion to dismiss, on January 29, 1975, the respondent testified that certain meetings and communications between himself, federal prosecutors and the petitioner, including the three-way meeting of February 4, 1974, occurred, however, he was unable to locate the memorandums of the meetings, that the matter was rather vague in his mind and absent the files which he could not locate he could not be specific as to precisely what all had transpired.

Petitioner was convicted by a jury of the charges in that federal indictment and incurred a 30 year sentence on April 17, 1975.

On September 7, 1976, petitioner filed a tort complaint in the Court Of Common Pleas, Allegheny County, Pa., charging the respondent with gross negligence for the inexcusable failure to protect the petitioner's property which was entrusted to him.



Without timely notice the Court of Common Pleas held an ex parte hearing and dismissed the complaint on the grounds that the respondent was absolutely immune from tort liability. The Superior Court of Pennsylvania affirmed and on June 16, 1978, the Pennsylvania Supreme Court granted certiorari, at Number 99 March Term 1978. At the same time the Pa. Supreme Court granted certiorari in the sister case, Ferri v Ackerman, \_\_\_\_\_ Pa. \_\_\_\_\_, 394 A. 2d 553(1978), which is now pending certiorari before this Court in Number 78-5981.

On January 24, 1979, the Supreme Court of Pennsylvania, by a divided Court (three affirming two dissenting and two judges not participating) affirmed the dismissal of petitioner's tort complaint against his former assigned counsel, holding that counsel assigned under the Criminal Justice Act was absolutely immune for the tort complained of, appendix pages 1 thru 9.

#### REASONS FOR GRANTING THE WRIT

1. Petitioner believes an important question of constitutional law is at issue here: whether an attorney, assigned or retained, is liable for the loss of his client's files entrusted to him, after the attorney-client relationship has terminated.

2. Petitioner believes the decision of the Supreme Court of Pennsylvania is in direct contradistinction with recent decisions of this Court pertaining to the immunity doctrine, Imbler v Pachtman, 424 U.S. 409 (1976); Butz v Economou, 47 \_\_\_\_\_.

4961 (1978) and Wood v Strickland, 420 U.S. 308 (1975), and contrary to this Court's decision in Lynch v Household Finance Co., 405 U.S. 538 (1972) pertaining to personal property rights.

#### ARGUMENT

It is the petitioner's position that: he should have been permitted to pursue his complaint, the decision of the Supreme Court of Penna. has stretched beyond what is necessary the outer limits of the doctrine of immunity to participants in judicial proceedings and those participants after the judicial proceedings have ceased; the tort complained of here was of constitutional nature not protected by the immunity doctrine.

1. The complaint was premised solely upon the admitted gross negligence (possible malfeasance) of the respondent, an attorney, to provide adequate safeguards for the protection of the petitioner's property, the files, over which the respondent exercised complete control.

2. The complaint was directed solely at the administrative functions of the respondent, where at best, only a qualified immunity attaches since no exercise of discretion is associated with the administrative activities in question here, Imbler, Butz, Wood, supra.

3. The admitted tort was committed one year after the attorney-client relationship under the C.J.A. had terminated

therefore the liability that attaches began at that moment, Fort Meyers Seafood Packers, Inc. v Stepoe and Johnson, 381 F. 2d 261 (D.C. Cir. 1967) stripping the respondent of any protections, if any existed, under the Criminal Justice Act, and precluding any defense of immunity since no judicial proceedings in which the respondent was a party to were in effect, Imbler, Butz, supra, Stump v Sparkman, L. Ed 2d (1978).

4. The deprivation of petitioner's personal property constituted a constitutional tort, Lynch v Household Finance Co., supra, thus immunity is not to be extended to the constitutional tort context absent the most compelling justification, Briggs v Goodwin, 569 F. 2d 1 (D.C. Cir. 1978), which are non-existent in the instant matter.

5. Here the respondent seeks to hide behind the immunity afforded his profession as a whole in judicial proceedings, however the inquiry here challenges not the identity or the title of the officer responsible, rather the misconduct of the particular officer beyond the protections needed to sustain an adequate flow of lawyers in judicial proceedings noted here.

6. To deny petitioner a remedy for the admitted tort inflicted here, while clients with retained counsel would enjoy a host of remedies, violates the Fourteenth Amendment, among other Constitutional and Statutory rights enjoyed by the petitioner.

## CONCLUSION

It is respectfully prayed that a writ of certiorari be granted to review and decide the constitutional question presented here; and,

that this petition for writ of certiorari be consolidated with the sister case presently before this Court pending a writ of certiorari in Ferri v Ackerman, No. 78-5981, since both petitions encompass the same issues, and

that this Court appoint the pro se petitioner here, counsel who will be permitted to file a consolidated brief encompassing both petitions.

Respectfully submitted,

F. R. Ferri  
Francis Rick Ferri  
P.O. Box 1000  
Lewisburg, Pa. 17837

Petitioner pro se